

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAUREEN O'DONNELL and RICHARD
DANIEL McWRIGHT, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

TIMESHARE RELIEF, INC.; ISOSCELES
FOUNDATION; TRANSFER AMERICA,
LLC; ASTON MARKETING GROUP, INC.;
DAVID MACMILLAN; and CINDY
MACMILLAN,

Defendants.

NO. 13-12665

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION, OR IN THE ALTERNATIVE, A STAY OF
CERTIFICATION BRIEFING PENDING DISCOVERY**

Plaintiffs Maureen O'Donnell and Richard Daniel McWright move this Court for an order granting class certification, or in the alternative, a stay of briefing pending the completion of discovery. This prophylactic motion is made solely to avoid the potential for an attempted "pick-off" of the named plaintiffs, a device allowed in certain FLSA cases by the recent Supreme Court decision of *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1529 (2013) (offer of full individual relief to class representative, even though rejected, rendered case moot).

Following the Genesis decision, such attempts to pick off named plaintiffs have substantially increased, and have been made in Rule 23 actions as well as FLSA collective actions. To prevent such a procedural gambit, Plaintiffs file this motion, adopting the procedure suggested by the 7th Circuit in *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011):

Class-action plaintiffs can move to certify the class at the same time that they file their complaint. The pendency of that motion protects a putative class from attempts to buy

off the named plaintiffs... If the parties have yet to fully develop the facts needed for certification, then they can also ask the district court to delay its ruling to provide time for additional discovery or investigation.

The grounds on which Plaintiffs rely are detailed in the accompanying memorandum in support of this motion.

Dated: October 22, 2013

Respectfully submitted,

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Attorneys for Plaintiffs and Proposed Class

Rule 7.1 Certificate

I hereby certify that counsel for Plaintiffs could not confer with counsel for Defendants as counsel for Defendants has not yet entered a notice of appearance.

/s/ John Roddy
John Roddy

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF) and paper copies will be sent to those indicated as non-registered participants on October 22, 2013.

/s/ John Roddy
John Roddy